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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 L.K.M., et al.

CASE NO. C18-5345 BHS

9 Plaintiffs,

ORDER DENYING
DEFENDANTS' MOTION FOR
RECONSIDERATION

10 v.

BETHEL SCHOOL DISTRICT, et al.

11 Defendants.

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13 This matter comes before the Court on Defendants Bethel School District et al.'s
14 motion for reconsideration. Dkt. 68. The Court has considered the pleadings filed in
15 support of and in opposition to the motion and the remainder of the file and hereby denies
16 the motion for the reasons stated herein.

17 **I. FACTUAL & PROCEDURAL BACKGROUND**

18 Plaintiff C.K.M. is intellectually disabled and was enrolled as a special education
19 student in the District at Bethel High School. Dkt 1-2, ¶ 3.1. Her mother and father,
20 Plaintiffs L.K.M. and J.M., bring suit against Defendants individually and on behalf of
21 C.K.M. Plaintiffs allege that C.K.M. was sexually assaulted and harassed by another
22 special education student ("David M.") during the 2012–2013 school year. *Id.* ¶¶ 3.5,

1 3.17. Plaintiffs assert that Defendants knew that David M. had an extensive history of
2 sexual assaults against other special needs students and that Defendants failed to protect
3 C.K.M. from the known risk of harm. *Id.* ¶ 3.31.

4 On April 19, 2021, the Court granted in part and denied in part Defendants’
5 motion for summary judgment after requesting supplemental briefing on particular issues.
6 Dkt. 65. The Court denied Defendants’ motion as to Plaintiffs’ 42 U.S.C. § 1983 *Monell*
7 claim against the District, concluding that a factfinder must determine if the
8 superintendent was delegated policymaking authority by the school board. *Id.* at 8–12.

9 On May 3, 2021, Defendants filed a timely motion for reconsideration. Dkt 68.
10 Defendants argue that new Ninth Circuit authority, *Benavidez v. City of San Diego*, 993
11 F.3d 1134 (9th Cir. 2021), requires the Court to dismiss Plaintiffs’ *Monell* claim and that
12 the Court may have erred in its analysis. The Court ordered Plaintiffs to respond, Dkt. 69,
13 and on May 11, 2021, Plaintiffs responded, Dkt. 70. On May 14, 2021, Defendants
14 replied. Dkt. 71.

15 II. DISCUSSION

16 Motions for reconsideration are governed by Local Rule 7(h), which provides as
17 follows:

18 Motions for reconsideration are disfavored. The court will ordinarily deny
19 such motions in the absence of a showing of manifest error in the prior
20 ruling or a showing of new facts or legal authority which could not have
21 been brought to its attention earlier with reasonable diligence.

22 Local Rules W.D. Wash. LCR 7(h). “[A] motion for reconsideration should not be
granted, absent highly unusual circumstances, unless the district court is presented with

1 newly discovered evidence, committed clear error, or if there is an intervening change in
2 the controlling law.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir.
3 2000) (quoting *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)).
4 Mere disagreement with a previous order is an insufficient basis for reconsideration, and
5 reconsideration may not be based on evidence and legal arguments that could have been
6 presented at the time of the challenged decision. *Haw. Stevedores, Inc. v. HT & T Co.*,
7 363 F. Supp. 2d 1253, 1269 (D. Haw. 2005).

8 Defendants argue that new Ninth Circuit authority merits the Court’s
9 reconsideration of the underlying order denying summary judgment as to Plaintiffs’
10 *Monell* claim. See Dkt. 68 at 3 (citing *Benavidez*, 993 F.3d at 1154). In *Benavidez*, the
11 Ninth Circuit considered whether the plaintiffs’ second amended complaint sufficiently
12 alleged a *Monell* claim against the County of San Diego for alleged unconstitutional
13 medical examinations. 993 F.3d at 1153. The Ninth Circuit concluded the complaint
14 failed to state a *Monell* claim against the County, in part, because a single instance of
15 unlawful conduct is insufficient to state a claim. *Id.* at 1154. But this new authority does
16 not change the Court’s calculus.

17 Defendants appear to repeat their arguments that a single instance of unlawful
18 conduct cannot be the basis of Plaintiffs’ *Monell* claim and rely on *Benavidez* as new
19 authority to support their argument. But *Benavidez* relies on standard *Monell* case law
20 and principles to reach its conclusion. See *id.* at 1153–54 (citing, *inter alia*, *City of*
21 *Canton v. Harris*, 489 U.S. 378 (1989); *Bd. of County Comm’rs v. Brown*, 520 U.S. 397
22

1 (1997)). The Court agrees with Plaintiffs that Defendants fail to show how *Benavidez*
2 overrules or otherwise changes the law on which the Court based its decision.

3 The Court also agrees with Plaintiffs that their *Monell* claims are predicated on
4 more than a single incident. Plaintiffs bring § 1983 claims against the District under two
5 theories: first that the District “is liable for its execution of policies, customs and
6 practices, as well as for its actions in failing to adequately train, monitor, or supervise its
7 agents and employees to ensure the safety of its students” in regards to the due process
8 violations, Dkt. 1-2, ¶ 4.21, and second that the District “violated the Equal Protection
9 Clause in its practice of failing to enforce its policies on peer-to-peer sexual harassment
10 in its special education classroom at Bethel High School,” *id.*, ¶ 4.31. The alleged
11 violations occurred every time the District failed to execute its peer-to-peer sexual
12 harassment policy or failed to report the sexual harassment.

13 The remainder of Defendants’ arguments are repetitive of what the Court has
14 already considered and rejected. *Compare* Dkt. 39 at 15–16 *and* Dkt. 56 at 22 *with* Dkt.
15 68 at 4–7. As the Court previously concluded, summary judgment is not warranted as to
16 Plaintiffs’ *Monell* claim on the due process violations, which includes the failure to train
17 claim, because a trier of fact must determine whether Superintendent Siegel is a final
18 policymaker. *See* Dkt. 65 at 10–12. Defendants have not met their burden to warrant
19 reconsideration. Their motion is, therefore, denied.

1 **III. ORDER**

2 Therefore, it is hereby **ORDERED** that Defendants' motion for reconsideration,
3 Dkt. 68, is **DENIED**.

4 Dated this 20th day of May, 2021.

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7 BENJAMIN H. SETTLE
United States District Judge